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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.3.2007

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.61/2004

M.Aswath .. Petitioner/Plaintiff (Respondent)

vs.

1.Jeeja Baby

2.Jayaramiah

3.J.Jayashankar

4.Manjunath

5.Chandrachoodeswaran @ Chinnaraj .. Respondents/Defendant (Defendant)

Revision Petition filed under Article 227 of the Constitution of India against the order dated 22.12.2003 made in I.A.No.488/2002 in O.S.No.184/1996 on the file of the District Munsif Hosur.

For Petitioners : Mr.R.Subramanian for M/s. V. Krishnan

For Respondents : Mr.V.Ragavachari, for R1,2 & 5. No Appearance for R3 & R4.

ORDER

This Revision Petition has been filed against the order dated 22.12.2003 made in I.A.No.488/2002 in O.S.No.184/1996 on the file of the District Munsif Hosur.

2.The plaintiff is the revision petitioner.

3.The plaintiff filed O.S.No.184/1996 on the file of the District Munsif, Hosur against defendants 1 to 5 for the following reliefs:

"a)declaring the plaintiff's right and title to the suit property.

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b)grant mandatory injunction to demolish the two unfinished upstairs with wall and steps (10 pillars) noted in the Commissioner's plan, to remove the temporary shed as noted in the Commissioner's plan as 'D' and to remove temporary thatched wall as noted in the Commissioner's plan as 'G', to remove the iron rods from the suit place as noted in the Commissioner's plan as 'J' and to remove the store jelly heap put up in the suit property which has been shown in the Commissioner's plan as 'L' and close the pit which has been shown in the Commissioner plan as 'N'. (All these things mentioned above in this para have been done by the defendants after the disposal of C.R.P's., before the High Court of Madras).

c)granting permanent injunction restraining the defendants and their men from interfering in any way with the plaintiff's peaceful possession and enjoyment of the suit property."

4.Written statement was filed by defendants 1, 2 and 5 in the suit on 30.8.1996 and additional written statement was also filed by them on 20.10.2000.

5.In the additional written statement, it was specifically stated that the plaintiff has deliberately undervalued the suit for the purpose of court fee and if the suit is properly and correctly valued, it will exceed the pecuniary jurisdiction of the court of District Munsif and the suit will have to be sent to the Sub-Judge, Hosur.

6.Thereafter in July 2002, the defendants filed I.A.No.488/2002 under Sec.12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 to take up for trial the preliminary issue with regard to jurisdiction to try the suit as the only issue before other issues are tried and permit them to adduce oral and documentary evidence in this behalf as per the decision of this court reported in 2002(2) CTC 513 (Gopalakrishnn, V.R. v. Andiammal).

7.The plaintiff filed a counter stoutly opposing this application by contending that the suit is already part-heard and the evidence on the side of the plaintiff is over and D.W.1 was already examined in chief in part and the decision of the High court will not apply to the facts of the case.

8.The trial court by order dated 22.12.2003 allowed I.A.No.488/2002 and aggrieved by the same, the above Revision Petition has been filed under Article 227 of the Constitution of India.

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9.Heard the learned counsel for the revision petitioner and the learned counsel for the respondents. I have also perused the documents filed and the judgments referred to by them in support of their submissions.

10.The defendants filed I.A.No.488/2002 under Sec.12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 to try the jurisdiction issue as preliminary issue and relied on the decision of this court reported in 2002(2) CTC 513 (cited supra).

11.Sec.12(2) of the Tamil Nadu Court Fees and Suits Valuation Act reads as under:

> "(2)Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the court shall pass such order as it deems just regarding costs of the suit."

12.From the above, it is very clear that under Sec.12(2) of the Act, a defendant may plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. But such an objection should be raised before evidence is recorded on the merits of the claim, but not later. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim.

13.Therefore, it is very clear that Sec.12(2) of the Act deals with decision as to proper court fees payable in a suit and its proper valuation. Sec.12(2) cannot be pressed into service by the defendants to decide the issue of the jurisdiction of the trial court as a preliminary issue.

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14.Now, let me consider the decision of this court reported in 2002 (2) CTC 513 (cited supra),which was strongly relied on by the defendants in their prayer in I.A.No.488/2002.

15.In 2002(2) CTC 513 (cited supra), this court after going through the provision of Order 14 Rule 2 CPC and Sec.12(2) of the Court Fees Act, summed up the legal position as under:

> "19.To sum up, the legal position is:
> (a)As per the amended Order 14, Rule 2, though a case may be capable of being disposed of on a preliminary issue, the court is given a mandate to try all the issues together.
>
> (b)However, an exception is made to this mandate by giving discretion to try an issue as to jurisdiction or a statutory bar to the suit as a preliminary issue.
>
> (c)In a given case, the court may decline to try even an issue relating to its jurisdiction or to a statutory bar to the suit as a preliminary issue if it considers expedient to do so.
>
> (d)The discretion vested with the court has to be exercised judiciously.
>
> (e)The parties will be at liberty to adduce such evidence as they may desire only in relation to that issue.
>
> (f)Ordinarily, no revision under Section 151, CPC will be entertained against the order of the trial court once such a discretion is used. But however, it is not an absolute one and in exceptional cases, the Court can entertain Revision and interfere.
>
> (g)When the defendant comes forward with an application disputing the valuation of the property or contends that the suit has not been properly valued, the Court has to consider the same. Such consideration shall be as per Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act and the Court cannot choose to decide that issue along with other issues. This provision viz., Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act 1955,which is a substantial law shall prevail over Order 14, Rule 2, CPC which is a procedural law.
>
> (h)In the course of considering a preliminary issue, the Court is empowered to record such evidence as

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parties desire to let in only in relation to that issue/aspect.

(i)The allegations in the plaint have to be taken as a basis and the claim must be read as a whole. The accepted Rule is that substance alone matters and not the form.

(j)When a suit is filed seeking a decree to set aside the sale, Court Fee has to be paid on the market value of the property on the date of filing of the suit.

(k)But however, if a plea is raised that the signature was obtained in a blank paper or that some misrepresentation was made and thereby fraud was played on the executor, then Court fee need not be paid for setting aside the same."

17.In 1966-II M.L.J. 551 (Gnana Desiga Swamigal v. Krishnanandaswami), this court held that under the Court Fees and Suits Valuation Act, a statutory right has been given to the defendant to raise objection to the adequacy of the court fee paid on the plaint and the defendant is entitled to plead that the subject-matter of the suit has not been properly valued or the fee paid is not sufficient either in his written statement or before evidence is recorded on merits.

18.It is true that the defendants in the present case raised objections as to the inadequacy of the court fees paid and the under-valuation of suit by the plaintiff in their additional written statement filed on 20.10.2000. In fact, the defendants themselves in their affidavit filed in support of I.A.No.488/2002 admitted that they filed another application earlier in I.A.No.283/2001 under Order 14 Rule (2) CPC to take up the suit for consideration under the preliminary issue before the other issues are taken and the said I.A.No.283/2001 was dismissed on 16.7.2001, against which, C.R.P.PD.No.3499/2001 was filed by them and the High court directed the trial court to frame an issue as to the valuation of the suit property as well as the consequential issue relating to the jurisdiction of the trial court. Therefore it is very clear that in CRP PD No.3499/2001 this court directed the trial court to frame necessary issues only and no direction was given to try that issue as preliminary issue. In such circumstances, once an application has been filed to try a particular issue and the same is dismissed, the same prayer cannot be maintained by the defendants in another application.

19.Further the defendants wanted the jurisdiction issue to be tried as a preliminary issue under Sec.12(2) of the Court Fees and Suits Valuation Act by giving an opportunity to let in evidence both oral and documentary to arrive at a decision as to the jurisdiction of the trial court.

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20.Under Sec.12(2) of the Court Fees and Suits Valuation Act, court can go into the question of proper valuation of the suit and the correct court fee payable on such valuation. Only after a decision is taken as to proper valuation and correct court fees payable, then only the question of the pecuniary jurisdiction of the court can be considered. But in the present case, no such effort was made by the trial court to render a finding on the proper valuation of the suit and the correct court fees payable by the plaintiff. Nor the trial court considered the earlier I.A.No.283/2001 filed for the same relief. Without even taking a decision on these issues of valuation of the suit and court fee payable on such valuation by asking the parties to let in evidence, the trial court hastily came to the conclusion that on perusing the records, the case submitted by the defendants sound reasoning and directed the plaintiff to file an application under Order 7 Rule 10(a) CPC for return of plaint.

21.The relevant paras of the trial court are extracted below for better appreciation:

> "5)The points for consideration is whether the petition is to be allowed or to be dismissed?
>
> 6)The counsel for the petitioner to support this petition relied on the decision reported in 2002(2) C.T.C. Page 513 (V.R. Gopalakrishnan Vs. Andiammal) wherein it is held that wherever there is a conflict between substantial law and procedural law substantial law will prevail over possessory law and further more if such issue has been raised as the preliminary issue at the option of the parties by filing an independent application then such application has to be taken up and has to be tried as a preliminary issue. Here this is a case where the petitioner urged that this court of first instance has ceased to try the matter in view of the pecuniary jurisdiction. On perusing the records the case submitted by the petitioner sound reasoning. Therefore in light of the circumstances reported in 2002(2) CTC page 513 and in view of the circumstances of the case in issue this court is of the opinion to decide the preliminary issue in favour of the petitioner thereby holding that this court is ceased to try the matter for want of pecuniary jurisdiction. Therefore this court directs the respondents to file an application under Order 7 Rule 10(a) for return of plaint so that this court will fix a date of appearance in the court, where the plaint to be filed after its return.
>
> 7)In the result, the petition is allowed."

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22.From the above, it is obvious that the trial court has failed to exercise its jurisdiction properly and in fact it has not followed the settled legal principles in this regard. It is also evident that no evidence, either oral or documentary was let in before the court below.

23.Therefore I have no hesitation to hold that the order of the trial court is vitiated and the same is to be set aside.

24.In the light of the above discussions, I direct the trial court to proceed with the suit as expeditiously as possible, preferably on a day to day basis, considering the fact that the suit is of the year 1996and its progress was stopped on the ground of deciding the preliminary issue of the trial court's pecuniary jurisdiction.

25.I further direct the trial court to consider all the issues and to render its findings on those issues on merits and in accordance with law.

26.In the result, the Civil Revision Petition is allowed. No costs. C.M.P.No.675/2004 is closed.

sks

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To

1. The District Munsif, Hosur,
2. The Section Officer, V.R. Section, High Court, Chennai.

+ One cc to Mr. V. raghavachari Advocate SR 13389
JRG (co)
sg 22/3/07

order,
C.R.P.PD.61/04.
5.3.07

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